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ATTORNEY DOCKET NO. RFSC-0007

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Clinton S. Hartmann

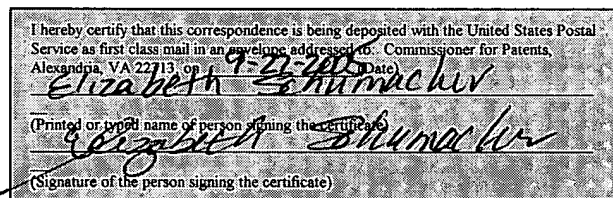
Serial No.: 10/062,894

Filed: January 30, 2002

For: MODULATION BY COMBINED MULTI-PULSE PER GROUP WITH
SIMULTANEOUS PHASE AND TIME SHIFT KEYING AND
METHOD OF USING THE SAME

Grp./A.U.: 2634

Examiner: Ha, Dac V.



Mail Stop Appeal Brief-Patents

Sir:

APPELLANT'S REPLY BRIEF UNDER 37 C.F.R. §41.41

In response to the Examiner's Answer mailed July 27, 2005, the Appellant submits this Reply
Brief as required by 37 C.F.R. §41.41.

I. Reply to Examiner's Arguments

The Examiner argues that the recitation “phase/time” is interpreted as either phase or time and, therefore, Devon meets the limitation of “unique phase/time”. The Examiner is non responsive to the Appellant’s argument that the specification is clear that a pulse in a specific time slot is distinguishable from a pulse in another slot by both time and phase. The claim interpretation by the Examiner that the term “phase/time” can only be interpreted as either phase or time is without foundation and contrary to the specification.

The Examiner notes that Devon states that three keys are used to encode each symbol. These are the frequency of the synchronization of one burst, the frequency of the signal tone burst and the pulse position of the signal tone burst. (Col. 6, lines 54-57). None of these elements used to encode data involve the phase of a signal, much less the location of multiple pulses within a group of time slots each having a unique phase/time position. Breaking down these three keys and referring to Figure 2 of Devon, it is still apparent that there is only one signal in each group of pulse positions. The signal may differ as to frequency or the carrier signal for the pulse, but it still is standard pulse position modulation that utilizes other signal processing techniques, such as varying the carrier signal and using a different pulse frequency, to carry more data. Notwithstanding the technique used, Devon only describes fundamental pulse position modulation with one pulse in a frame of pulse positions. That is, Devon only describes a single data pulse located within a group of time slots that are transmitted after an identifying sync pulse. Although the frequency of the pulse may vary, it is still only a single data pulse located within a discrete number of time slots; even if the sync pulse or the data pulse also carries information by virtue of having different frequencies or another different signal characteristic. The Appellant submits that those of ordinary skill in the pertinent art will not

view the sync pulse as being within the group of data bearing time slots because it is always in the same place and viewed separately from the time slots carrying data. Thus, because Devon only provides for one pulse per group of pulses, Devon does not anticipate encoding data using multiple pulses distributed among a group of time slots and is not, as such, an anticipating reference with respect to independent Claims 1 and 11

II. Procedural Matters


The Appellant respectfully points out that the Examiner appears to be working from an outdated set of federal regulations with respect to the required contents of an appeal brief. For example, the Examiner cites 37 CFR 1.192(c)(7) as support for his statement that the claims stand or fall together because the “ brief does not include a statement that this grouping of claims does not stand or fall together and reasons in support thereof.” Since at least August 12, 2004, the requirements for an appeal brief have been set out in 37 CFR 41.37, which regulations no longer call for a statement regarding the grouping of claims.

The 37 CFR 41.37 regulations also do not contain an explicit statement requiring a statement to be made regarding related appeals and interferences, if there are none. Although the rules contain no such requirement, we have been told (subsequent to the filing of the present appeal brief) that the Board of Patent Appeals and Interferences has given oral instructions to certain examiners that such a statement is still expected. In this regard, please note that there are no related appeals and interferences in the present case.

III. Conclusion

For the reasons set forth above, Devon does not anticipate the claims on appeal. Further, the Claims are patentably nonobvious over Devon. Accordingly, the Appellant respectfully requests that the Board of Patent Appeals and Interferences reverse the Examiner's Final Rejection of all of the Appellant's pending claims.

Respectfully submitted,


Jimmy L. Heisz
Registration No. 38,914

Dated: Sept 27, 2005